

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. RICHARD C. WESLEY,
Circuit Judges.

Shi Wang Wang,
Petitioner,

-v.-

No. 05-5798-ag
NAC

Board of Immigration Appeals,
Respondent.

FOR PETITIONER: John Z. Zhang, New York, New York.

FOR RESPONDENT: Michael J. Garcia, United States Attorney for the Southern District of New York, Benjamin H. Torrance, Kathy S. Marks, Assistant United States Attorneys, New York, New York.

UPON DUE CONSIDERATION of these petitions for review of the Board of Immigration Appeals ("BIA") decisions, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Shi Wang Wang, through counsel, petitions for review of the BIA decision denying his
2 motion to reopen. We assume the parties' familiarity with the underlying facts and procedural
3 history of the case.

4 This Court reviews the BIA's denial of a motion to reopen or reconsider for abuse of
5 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*
6 *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006). An abuse of discretion may be found where the
7 BIA's decision "provides no rational explanation, inexplicably departs from established policies,
8 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,
9 where the Board has acted in an arbitrary or capricious manner." *Kaur*, 413 F.3d at 233-34; *Ke*
10 *Zhen Zhao v. U.S. Dep't of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

11 The BIA did not abuse its discretion in denying Wang's motion to reopen. The BIA
12 reasonably found that Wang's motion was untimely and that Wang failed to demonstrate changed
13 circumstances in China that would excuse the late-filing of his motion. In his motion, Wang did
14 not dispute that the motion was untimely under 8 C.F.R. § 1003.2(c)(2), nor could he have
15 succeeded on such a claim, inasmuch as the motion was filed in August 2005, almost seven years
16 after the September 1998 BIA decision from which the motion was filed. Rather, Wang claimed
17 that his untimely filing should be excused under 8 C.F.R. § 1003.2(c)(3)(ii), because he had
18 demonstrated changed circumstances in China. It is not clear, however, to what changed
19 circumstances his motion was referring. Although Wang contended that he suffered persecution
20 in China as an active member of the anti-Chinese government movement, and that if he were sent
21 back to China, he and his family would be persecuted because of his membership in that
22 movement, he presented no evidence supporting this claim, and he fails to raise this claim in his

1 brief to this Court. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542 n.1, 546 n.7 (2d Cir.
2 2005) (issues not raised on appeal are generally deemed waived). Wang also claimed that his
3 wife had given birth to two U.S.-born children, and his return to China would “cause extreme
4 hardship to his family, to his wife and to his daughter financially, socially and humanitarially.”
5 To the degree that this claim might be construed as a claim of changed circumstances in China
6 relating to the birth of Wang's U.S.-born children, Wang presented no evidence to suggest what
7 those “changed circumstances” might be or how they might relate to his claim regarding his
8 children. *See* 8 C.F.R. § 1003.2(c)(3)(ii). Further, although Wang claims in his petition for
9 review that “he will . . . suffer . . . forceful measures under the family planning policy because of
10 his previous violation and the new violation of the Chinese family planning policy,” not only did
11 Wang not argue before the IJ or the BIA that he had violated China's family planning policies
12 while in China, *see* 8 U.S.C. § 1252(d)(1) (exhaustion requirement); *Gill v. INS*, 420 F.3d 82, 86
13 (2d Cir. 2005) (same), but, as with his motion to reopen, he presents no evidence of changed
14 circumstances in China relating to the claim that he would suffer persecution based on his U.S.-
15 born children.

16 For the foregoing reasons, the petition for review is DENIED. Having completed our
17 review, any stay of removal that the Court previously granted in this petition is VACATED, and
18 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending

1 request for oral argument in this petition is DENIED in accordance with Federal Rule of
2 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

3
4 FOR THE COURT:
5 Roseann B. MacKechnie, Clerk
6

7 By: _____